WPMB No. 679/2003

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.
(Intervening Appln. No.10107/06)
(Recall Appln. 10108/06)

Since the petitioner has already been disposed of finally vide order dated 22.02.2006, therefore, the Court has become functuous officio and hence the applications are rejected accordingly.

(B.C.K. J.) **(P.C. V., J.)**

10.8.2006
Rajeev Dang

COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITON NO.679 OF 2003 (M/B)

Rajesh Kumar Suri S/o B.L. Suri,
R/o 464, Khurbura, Dehradun, Uttaranchal
..... Petitioner

Versus

1. State of Uttaranchal through the Chief Secretary Government of Uttaranchal, Dehradun Uttaranchal
2. District Magistrate, District Dehradun
3. C.B.I. S.P.E. Dehradun through its Superintendent of Police
4. U.P. Financial Cooperation, Rajpur Road, Dehradun, Uttaranchal
5. Khadi Gram Udyog, Subhash Road, Dehradun, Uttaranchal
6. Punjab National Bank Raja Road, Dehradun, Uttaranchal
7. Punjab National Bank Jharjar, Prem Nagar, Dehradun, Uttaranchal
8. Sudhir Jain S/o Sri A.P. Jain R/o 30 Raja Road, Dehradun, Uttaranchal.

..... Respondents.

Sri Gopal Naran, learned counsel for the petitioner.
Sri U.K. Uniyal, Addl. Advocate General for the State.

Dated: 22.02.2006

Coram: HON'BLE P.C. VERMA, J.
HON'BLE B.C. KANDPAL, J.

By means of this writ petition, the petitioner has prayed for of mandamus commanding the respondents to change the investigation from State Vigilance to the Central Bureau of Investigation (CBI) in the Rs. 50.00 crores forgery in the Judges Quarter Scam at 48 Balbir Road, Dehradun, Uttaranchal and to send

entire report connect to scam alongwith the complete record to this Court so that no more tempering of evidence takes place.

2. This Court vide order dated 21.07.2003 passed the following order:-

> *"Notices on behalf of respondents no. 1 to 3 have been accepted by the learned CSC and on behalf of respondent no.4 has been accepted by Sri U.K. Uniyal, Advocate. Learned counsel for the respondents pray of and are granted ten days time to file counter affidavit.*
>
> *List on 05.08.2003. On that date, it shall be specifically made clear to this Court as to why the recommendation of the District Magistrate was not accepted by the State Government and the matter was referred to vigilance inquiry despite recommendation of the District Magistrate for holding inquiry by the C.B.I.*
>
> *The report of the District Magistrate dated 12.08.2002 be also summoned and progress made by the vigilance department in the inquiry entrusted to it by the Government in this matter shall be placed before this Court."*

3. Thereafter, vide order dated 05.08.2003, this Court passed the following order:-

> *"Heard Sri Alok Singh, learned counsel for the petitioner and Sri U.K. Uniyal, learned Additional Advocate General.*
>
> *By means of this writ petition, a writ in the nature of mandamus commanding the respondents to change the investigation from the State vigilance to the Central Bureau of Investigation in the matter of alleged scam involving of Rs. 500000000/-(Rupees Fifty Crores), is sought.*
>
> *By order dated 21.7.2003, Division Bench of this Court has specially issued notice and had directed as to why recommendation of the District Magistrate was not accepted by the State Government and why was the matter referred to vigilance.*
>
> *Today when the matter reached hearing, Sri U.K. Uniyal, learned Additional Advocate General stated that there is some substance in the allegations*

made by the petitioner in relation to above stated alleged scam.

In view of that statement, we are directing Home Secretary, Government of Uttaranchal, Dehradun to file affidavit dealing with each of the averments in the petition within a period of two weeks.

List on 22.8.2003. Let the case be listed on the top of the board."

4. Thereafter on 22.08.2003, the following order was passed by this Court:-

Pursuant to our order dated 5th August 2003, Additional Advocate General today filed counter affidavit. We may mention that in this counter affidavit, it is conceded that some officers of Urban Ceiling Department may be involved in the land scam. Today, Ld. Counsel for the petitioner further pointed from his supplementary affidavit that persons who have allegedly sold about ten acres of Government land to the Govt. had received loans from Financial Institutions, like U.P. Financial Corporation, Khadi Gram Udyog and Punjab National Bank. It was further pointed out that these loans were given against purported mortgages. However, in the letter addressed by S.D.M. to the District Magistrate on 28th January 2000, which is on page 30 of the supplementary affidavit, no such mortgages are in existence. We were informed by the Additional Advocate General that the Vigilance Department is enquiring into this aspect concerning Punjab National Bank; U.P. Financial Corporation and Khadi Gram Udyog. However, it is alleged that steps taken by the State by way of recovery proceedings have been suddenly stopped pursuant to the order dated 28th December 2001 (See page 32 of the Supplementary Affidavit). We need a counter form the State on this point.

We are, therefore, directing the State to file their counter affidavit to the supplementary affidavit and in the meantime we are also directing the petitioners to join Khadi Gram Udyog, Punjab National Bank and U.P. Financial Corporation as party respondents.

In the meantime, Mr. Naithani, Ld. Sr. Counsel appearing on behalf of Sri Sudhir Jain (one of the alleged sellers) of Govt. lands to the Govt. has moved an application for intervention. Since, he is a party affected, we directing the petitioners to joint him as party respondent.

Petitioners to carry out amendments within one week form today.

Stand over to 15th September 2003 under Regular Admission.

We clarify that we are not expressing any opinion at this stage because investigation is still going on and whatever is mentioned hereinabove is mentioned only in order to enable the Govt. to put in its proper reply as at this state the matter is purely in the realm of allegations.

5. Therefore, on 22.08.2003, this Court passed the following order:-

Pursuant to our order dated 22.08.2003, further directions are required to be issued.

(a) As requested by the learned Government Advocate, we are giving six weeks time from today to the vigilance department to complete the inquiry ordered by us vide order dated 22.08.2003 into 'land scam', under which Government land has been sold to the Government.

(b) We are directing the Collection Amin to file an affidavit before the next date mentioning the Authority which directed him not to take steps pursuant to the Recovery Certificate (R.C.) as indicated in the order dated 28.12.2001, which is one of the several orders mentioned in the Order Sheet annexed to the Counter Affidavit of Mr. Rashid Ali Khan, Tahsildar dated 15.09.2003. This direction is required to be given because in the order dated 28.12.2001, the Collection Amin has recorded that he has been told by the 'Pramukh Sachiv Uttaranchal Sarkar Mahodaya' not to take steps pursuant to the R.C. Therefore, we went to know the name of the Authority and the person from whom the Collection Amin has received this instruction. This aspect is of importance in view of certain allegations made by the petitioner for transferring the case to the Central Bureau of Investigation.

(c) Similarly, the collection Amin and Tahsildar Sri Rashid Ali Khan shall also file affidavits explaining why the next entry in the order sheet which reads as follows does not bear any date whereas all other entries in the order-sheet bear the dates.

''महोदय,

बकीदार की अचल सम्पत्ति को नीलाम करने के लिए फार्म IX भर दिये गये है । अगर आप सहमत हों तो हस्ताक्षर करने का कष्ट करें। रिर्पोट सेवा में प्रषित है।

ह0 राषिद अजी खान ह0 राजेन्द्र प्रसाद''

तहसीलदार संग्रह अमीन

We also want Tehsildar to explain as to the basis on which he has stated that the sale proceeds were initiated pursuant to the R.C. despite instructions form the higher-ups not to proceed with the recovery.

(b) The petitioner is directed to serve newly added respondents nos. 4, 5,6 and 7 before the next date of hearing and if possible, within one week from today.

(c) Petitioner is directed to file rejoinder to the counter affidavit filed by the respondent no.8 (Mr. Sudhir Jain) on 15.09.2003 to which reply is required.

The report of the District Magistrate is ordered to be re-sealed. The Court has perused the report today.

List the matter on 3.12.2003.

Copy expedited.

6. Till date, no progress report has been submitted by the Vigilance Department, therefore, we feel that the Investigating Agency i.e. the Vigilance Department is not vigilant and no fair enquiry is expected to be done. Therefore, in the light of the recommendation of the District Magistrate, we direct C.B.I., S.P.E. Dehradun- Respondent No.4 to investigate into the matter and submit a report to take due course of action.

7. The Vigilant Department is directed to transfer all the material to the C.B.I., S.P.E., Dehradun- Respondent No. 4 expeditiously. S.P., C.B.I. shall conclude the investigation within a period of six months from the date of production of certified copy of this order.

8. With the above observation, the petition is disposed of finally.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang